

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVELL C. HOLMES,

Plaintiff,

v.

DAVID BAUGHMAN, et al.,

Defendants.

No. 2:20-cv-1496 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se with a civil rights action, has requested appointment of counsel. Plaintiff explains that he has mental health issues, has difficulty understanding the court's orders, and feels that he is not being provided help at the prison.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not

1 establish exceptional circumstances that would warrant a request for voluntary assistance of
2 counsel.

3 In the present case, this court is unable to determine the likelihood that plaintiff might
4 succeed on the merits of his claims because plaintiff has not yet stated any claims cognizable
5 under 42 U.S.C. § 1983. At this juncture, the appointment of counsel is premature.

6 Plaintiff states he does not understand the court's screening order and what is required of
7 him. The court will attempt to simplify that order here. This court found that plaintiff was
8 attempting to state claims for deliberate indifference to his serious medical needs. The problem
9 this court found with plaintiff's allegations is that they did not show that each defendant was
10 deliberately indifferent. Therefore, in order to state claims against the defendants, plaintiff must
11 describe specifically the following: (1) how each defendant knew about plaintiff's medical
12 problem; (2) what each defendant did or should have, but did not, do; and (3) how each
13 defendant's actions or inactions caused plaintiff further significant injury or unnecessary pain. In
14 his amended complaint, plaintiff must describe facts that address each of these three issues.

15 In recognition of the difficulties plaintiff faces in preparing an amended complaint, this
16 court finds it appropriate to give plaintiff additional time to do so. Plaintiff's amended complaint
17 was due to be filed December 2, 2020. This court will give plaintiff an additional 60 days to file.

18 Accordingly, IT IS HEREBY ORDERED that

19 1. Plaintiff's motion for the appointment of counsel (ECF No. 10) is denied.

20 2. On or before February 2, 2021, plaintiff shall file a first amended complaint as
21 described in the court's screening order and herein. If plaintiff fails to file a timely amended
22 complaint, this court may recommend this action be dismissed.

23 Dated: December 16, 2020

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25 DLB:9/DB/prisoner-civil rights/holm1496.31

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE